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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,063	02/06/2002	Nigel A. Browne	500024-A-01-US (Browne)	1202

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EXAMINER	
AGDEPPA, HECTOR A	
ART UNIT	**PAPER NUMBER**
2642	3

DATE MAILED: 09/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/072,063	Applicant(s) BROWNE ET AL.	
	Examiner Hector A. Agdeppa	Art Unit 2642	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 February 2002*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *20 March 2002* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

1. Claims 1 – 12 are provisionally rejected under the judicially created doctrine of double patenting over claims 1 - 12 of copending Application No. 10/251,136. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows:

Both applications claim a method and system for assigning weightings to processing scripts in a telephony system. Moreover, both applications claim the same configuration/component makeup in the claimed apparatuses, i.e., using a memory for storing weightings and a processor for selecting processing scripts.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 2, and 7 – 9, 11, and 12 are rejected under 35 U.S.C. 102(e) as being anticipated by US 6,751,310 (Crossley).

As to claims 1, 11, and 12, Crossley teaches a system and method for prioritizing call campaigns in automatic call distributors (ACD)/call centers wherein sets of call campaign scripts (A, B, C) and system scripts, either reading on the claimed processing scripts, are prioritized according to/assigned reflective pacing ratio weightings. (Abstract, Col. 2, lines 35 – 65, Col. 3, line 63 – Col. 6, line 41, Col. 8, line 17 – Col. 10, line 59) The scripts are used to instruct the system on how to perform telephony operations, i.e., processing communications in the ACD. (Col. 4, line 50 – Col. 6, line 41) Note as well that it is known in the art to consider an ACD as a whole, as a switch

because it is the ACD that switches incoming and outgoing calls between agents and customers/called parties.

Crossley teaches selecting one of the scripts (A, B, and C) for application to a certain calls/communications depending on which campaign the call/communication falls under, as well as using the assigned weightings to provide a desired percentage of usage over given number of calls/communications. (Col. 1, line 13 – Col. 2, line 9, Col. 10, lines 6 – 59)

Finally, Crossley teaches the use of a database 140 to store the above-mentioned weightings and priorities as well as the use of a success processor 130 to select, apply, and thereby adjust the pacing ratios and scripts. (Figs. 2A and 3, Col. 8, lines 17 – 43)

As to claims 2 and 7, Crossley teaches one embodiment of the system wherein each campaign script (A, B, and C) is assigned a weighting amount of 10%, read as the claimed set of equal weightings. Furthermore, Crossley teaches that the percentage specifies a desired percentage of usage of the campaign script. (Col. 10, lines 28 – 48).

As to claim 8, see the rejection of claims 2 and 7 and note that the percentage weightings used by Crossley et al. also reads on the claimed frequency value. If a campaign script is to be used to handle 75% of all calls, it will be used 75% more frequently than for example, a script that will only be used to handle 1% of all calls.

As to claim 9, the scripts discussed above are inherently lines of code. As already mentioned, scripts are used to instruct the system on how to process calls/communications. Any instructions wherein the things to be instructed are

databases, processors, and servers, etc. must be at some time, implemented as code or else these system elements will not be able to interpret the instructions. (Figs. 2A – 3, Col. 4, line 50 – Col. 6, line 41)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

2. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,751,310 (Crossley) in view of US 5,740,233 (Cave et al.)

Crossley has been discussed above. What Crossley does not teach is using a round-robin selection process when selecting scripts.

Crossley simply does not discuss how calls are assigned to the various campaign scripts, but notes that somehow, call records are processed for assigning to a campaign. (Col. 3, line 59 – Col. 4, line 2, Col. 6, lines 33 – 41 of Crossley) This is because the invention of Crossley is concerned with the priority/weighting aspect of the

call scripts. Many known methods of assigning calls to agents, whether inbound or outbound or known in the art, round-robin being only one a plurality of choices, such as first in first out, longest idle, etc. as taught by Cave et al. (Col.2, lines 8 – 18 of Cave et al.) It would have been obvious for one of ordinary skill in the art at the time the invention was made to have employed a round-robin selection method because it is old and well known and merely a known choice.

3. Claims 4 – 6 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,751,310 (Crossley) in view of US 5,740,238 (Flockhart et al.)

As to claim 4, Crossley has been discussed above. What Crossley does not teach is using integer values to implement assigned weightings.

However, it is well known in the telephony arts that different forms of weightings can be used as taught by Flockhart et al., wherein integer values representing seconds are used to effect weighting. (Col. 7, lines 1 – 39 of Flockhart et al.) It would have been obvious for one of ordinary skill in the art at the time the invention was made to have used integer values instead of percentage values inasmuch as either type of value has the same end effect. Therefore, choosing one over the other is merely a design choice or preference. Furthermore, an integer value could very well be used to represent a percentage value. Such variations will depend on how one wants to design a system. For example, storing an integer value, i.e., "1" may simply be easier than storing a percentage value, i.e., "0.75" because less memory is needed.

As to claim 5, see the rejection of claims 2, 4, and 7.

As to claim 6, see the rejection of claims 2, 4, and 7 and note that Crossley also teaches using different weightings as opposed to equal weightings for all scripts. (Col. 10, lines 6 – 17 and lines 49 – 59 of Crossley)

As to claim 10, see the rejection of claims 1, 11, and 12. See also Col. 1, line 20 – Col. 2, line 49 of Flockhart et al. and note that Flockhart et al. teaches it is well known in the ACD arts to utilize a plurality of ACDs and a plurality of call campaign splits or groups as well as the known motivation to efficiently distribute calls to the best-suited/most appropriate group or ACD. Therefore, while Crossley addresses a single ACD scenario, using the above-discussed system, and method in a multiple or distributed ACD system/switch would have been obvious to one of ordinary skill in the art. Note that any switch or ACD has multiple processing elements. (Figs. 1 – 3 of Crossley and Figs. 1 – 3 of Flockhart et al.) Furthermore, Flockhart et al. teach the desire to efficiently route calls in a load balanced manner, read as the claimed desired distribution of communication processing operations.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 5,335,268 (Kelly, Jr. et al.) teaches a system and method for the statistical diagnosis of the operation of an ACD, wherein resources such as agents and lines are measured regarding utilization and various call statistics, and are weighted.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hector A. Agdeppa whose telephone number is 703-305-1844. The examiner can normally be reached on Mon thru Fri 9:30am - 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ahmad F. Matar can be reached on 703-305-4731. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

H.A.A.
August 28, 2004

HECTOR A. AGDEPPA
PATENT EXAMINER